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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE LOPEZ-REYES,

Defendant - Appellant.

No. 06-50104

D.C. No. CR-04-00787-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted October 22, 2007^{**}

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Jorge Lopez-Reyes appeals from his 77-month sentence, imposed following his guilty-plea conviction for being found in the United States after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291.

We affirm the sentence, and remand to correct the judgment.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lopez-Reyes challenges the reasonableness of his sentence on three grounds. First, he contends the district court failed to consider the nature and circumstances of the offense, as well as Lopez-Reyes's history and characteristics. Second, Lopez-Reyes contends the district court failed to consider whether the punishment was just. The record belies appellant's assertion that the district court failed to consider the appropriate factors. *See United States v. Mix*, 457 F.3d 906, 912 (9th Cir. 2006) ("Judges need not rehearse on the record all of the [factors set forth in 18 U.S.C. § 3553(a)]; it is enough to calculate the range accurately and explain why (if the sentence lies outside it) this defendant deserves more or less.").

Finally, Lopez-Reyes contends the district court failed to address his request for a downward departure because the court did not believe it had authority to depart. However, the district court did address Lopez-Reyes' request for a downward departure, and declined to exercise its discretion to reduce the sentence below the Guidelines range. We cannot say the sentence imposed was unreasonable. *See United States v. Mohamed*, 459 F.3d 979, 985 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b)(2). *See*

United States v. Herrera-Blanco, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct judgment.